

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD
MODIFICATION OF FY2022 HOSPITAL BUDGET DECISION AND ORDER

In re: University of Vermont Medical Center)
Fiscal Year 2022)
_____)

Docket No. 21-004-H

INTRODUCTION

On September 13, 2021, the Green Mountain Care Board (GMCB or the Board) approved an FY22 budget for the University of Vermont Medical Center (UVMHC). On October 1, 2021, GMCB issued a written budget order for UVMHC's FY22 budget (Budget Order). The FY22 budget previously approved by the GMCB for UVMHC, and reflected in the Budget Order, included approval of a charge increase "at not more than 6.05% over current approved levels." Budget Order, Order, ¶ B.

On March 18, 2022, the University of Vermont Health Network (UVMHN), on behalf of UVMHC, submitted a request to modify UVMHC's approved budget by increasing the hospital's commercial rate by 10%. Following a presentation by UVMHN on March 30, 2022, GMCB staff presentations and GMCB deliberations on April 6 and 8, 2022, the Board voted to approve a mid-year change in charge for UVMHC of up to 2.5% above the hospital's approved FY22 budget.

LEGAL FRAMEWORK

One of the Board's core regulatory responsibilities is to review, approve, and monitor the budgets of Vermont's 14 community hospitals. 18 V.S.A. §§ 9374(b)(7), 9456. The Board's oversight of hospital budgets is guided by its statutory charge "to promote the general good of the state by: (1) improving the health of the population; (2) reducing the per capita rate of growth in expenditures for health services in Vermont across all payers while ensuring that access to care and quality of care are not compromised; (3) enhancing the patient and health care professional experience of care; (4) recruiting and retaining high quality health care professionals; and (5) achieving administrative simplification in health care financing and delivery." 18 V.S.A. § 9372.

In response to a request from a hospital, the Board may adjust a previously established budget "upon a showing of need based upon exceptional or unforeseen circumstances." 18 V.S.A. § 9456(f); GMCB R. 3.000, § 3.401. When considering a possible adjustment, the Board considers the following factors:

- (1) The variability of a hospital's actual revenues, taking into account the resources of payers and the methods of payment used by the payers;
- (2) The hospital's ability to limit services to meet its budget, consistent with its obligations to provide appropriate care for all patients;

- (3) The financial position of the hospital in relation to other hospitals and to the health care system as a whole, using the statistics developed from information submitted in compliance with the uniform reporting manual;
- (4) The hospital's performance under budgets identified or established under subchapter 7 of Chapter 221 of Title 18 of Vermont Statutes Annotated for the previous three years and its budget projections for the next three years; and
- (5) Any other considerations deemed appropriate by the Board, including but not limited to other instances in which a hospital has less than full control over the expenditures limited by the budget.

GMCB R. 3.000, § 3.401(a)(1)-(5).

If the Board concludes a “hospital’s performance has differed substantially from its budget,” the Board may make appropriate adjustments to the hospital’s current and future budgets. See *id.* § 3.401(c); see also 18 V.S.A. § 9456 (h)(2)(B)(i)(II) (“The Board may order a hospital to take such corrective measures as are necessary to remediate . . . the deviation . . .”). Appropriate adjustments may include “allowing hospital rates [charges] to be increased for a hospital with a deficit caused by revenues that were less than projected, but whose actual expenditures were within budget limits.” GMCB R. 3.000, § 3.401(c)(3).

A hospital bears the burden to justify its budget or any budget amendment it may request. See *id.* § 3.306(a).

Based on the above, the Board issues the following Findings, Conclusions, and Modification to the Budget Order:

FINDINGS

1. On October 1, 2021, the Board issued its Budget Order for UVMMC, approving a FY22 NPR/FPP budget at a growth rate of 6.0% over its FY21 budget, with a total NPR/FPP of \$1,500,593,928 for FY22, and a charge increase at not more than 6.05% over then-current approved levels. See Budget Order, ¶¶ A, B. The 6.05% change in charge was a reduction from UVMMC’s requested 7.05%. See Budget Order, Conclusions.
2. On March 18, 2022, the University of Vermont Health Network (UVMHN), on behalf of UVMMC, submitted a request to modify UVMMC’s approved budget by increasing the hospital’s commercial rate by 10% (Budget Adjustment Request). UVMMC’s Board of Trustees approved its budget adjustment request on March 17, 2022. See Budget Adjustment Request, 7. UVMHN leadership presented to the Board on March 30, 2022, in support of the requested mid-year budget adjustment. See UVMHN FY 2022 Mid-Year Budget Adjustment Presentation (UVMHN Presentation), 1.
3. On April 6, 2022, and April 8, 2022, GMCB staff presented analysis of UVMMC’s mid-year adjustment request, along with an analysis of the hospital’s year-to-date performance and projections. See GMCB PowerPoint, UVMMC and CVMC Budget Modification Request, 1 (April 8, 2022) (Deliberations II). The Board reviewed and deliberated on the

request on April 6, 2022, and April 8, 2022. Following deliberations on April 8, 2022, the Board voted to approve a mid-year change in charge for UVMHC of up to 2.5% above the hospital's approved FY22 budget.

4. UVMHC requested an increase to its charges of 10% from its approved FY22 budget. See Budget Adjustment Request, 1. The hospital projected that, even with a 10% rate increase, its operating margin for FY22 would be negative. See Budget Adjustment Request, 5; *see also* UVMHC Presentation, 15. UVMHC expects no Medicaid or Medicare funding increases for FY22. See Budget Request, 5; Testimony of Al Gobeille, Hearing Transcript, 36:3-36:24.
5. UVMHC cites increased expenses arising from cost inflation as the reason for UVMHC's mid-year rate adjustment request. See Budget Adjustment Request, 2-4. UVMHC states that the hospital assumed a 2.5% rate of cost inflation for its FY22 budget, but the "year-to-date annualized rate we have experienced is 9.2%." Budget Adjustment Request, 3. UVMHC noted that UVMHC's approved FY22 budget was "wrong," even though the 2.5% inflation it assumed when preparing the budget was "high," that rate is less than the annualized rate of 7.9% that UVMHC cites as current inflation. See Testimony of Al Gobeille, Hearing Transcript, 17:15-18:7. During its FY22 budget hearings, the hospital was aware that inflation was trending above the 2.5% underlying its FY22 budget assumptions, and notes that inflation was around 4%-5% at that time. See *id.*
6. UVMHC cites staffing issues, and particularly the need and cost of traveling staff, as a part of its increased costs from inflation. See Budget Adjustment Request, 4. The hospital's use of traveling staff increased from 137 in December 2020, to 399 in December 2021, and to 404 for FY22 year to date through January, 2022. See *id.*; *see also* UVMHC Presentation, Slide 8. The average hourly rate for travelling staff also approximately doubled, to \$160, during that time. See Budget Adjustment Request, 4. UVMHC stated that the COVID-19 has affected hospital operations in FY22, with the Delta and Omicron variants being the most severe parts of the pandemic in terms of impact on the UVMHC hospitals. See Testimony of Al Gobeille, Hearing Transcript, 8:7-9:12.
7. UVMHC's patient volume in FY22 has been below its budget assumptions. See UVMHC Presentation, 6; Testimony of Al Gobeille, Hearing Transcript, 12:11-15:3. UVMHC has seen longer patient stays and limited patient beds in part because insufficient nursing home or SNF capacity leaves patients who could be discharged in the hospital for longer, even though the patients don't require hospitalization and the diagnostic related grouping payment for that patient may have been exhausted. See Testimony of Al Gobeille, Hearing Transcript, 13:22-14:18.
8. Separated by inpatient, outpatient, and professional services, UVMHC projects NPR/FPP to be below budget in all categories if the hospital does not receive its requested rate increase, and if the hospital does receive its requested rate increase, its NPR/FPP for

outpatient services is projected to close its budget gap, while NPR/FPP for the other two categories would remain below budget. *See Deliberations II, 25-27.*

9. GMCB staff, working with UVMHN leadership, compared UVMHC's budgeted cost inflation increases, which were the assumptions used by the hospital in preparing its FY22 budget, and UVMHC's projected cost inflation increases at the time it submitted its request for a budget adjustment. *See Deliberations II, 32-35.* The following table shows a comparison between the hospital's budgeted and projected cost inflation.

Do not Modify, except for cells labeled "Other"					
Inflation: Projection FY2022 - UVMHC					
Identify key categories of operating expense inflation and provide the estimated inflation factor. This is not an assessment of overall growth of the category (i.e., does not need to tie to the P&L). It should <u>focus on price effects only (not utilization growth or new hires)</u> . Please follow the prompted categories below. Use the 'Other' lines to capture line items not listed that cover 5% or more of the budget, and then one as a "catch all" category so the entire operating expense budget is covered (i.e. Category % of Operating Expense Budget is 100%). Please explain inflation assumptions in the comment column.					
Expense Category	Estimated Inflation				Comment
	% Increase	\$ Increase	Category % of Total Operating Expense Budget	Weighted Average (Column C * Column E)	
<i>Example: Wages/Compensation- Medical Staff</i>	2%	\$ 500,000.00	60.0%	1.2%	<i>This is inflation price effect only, does not account for new hires (volume).</i>
Wages/Compensation - Medical Staff	1.9%	\$ 4,481,262	11.6%	0.2%	
Wages/Compensation - Non-Medical Staff	4.8%	\$ 40,235,427	31.7%	1.9%	
Wages/Compensation - Non-Medical Staff Travelers filled	128.3%	\$ 51,324,999	2.9%	3.7%	Travelers filling permanent budgeted staff positions
Contract Staffing (Travelers)	85.0%	\$ 11,351,024	1.4%	1.2%	Based on FY2022 budgeted travelers of 80 FTEs
Other	0.0%	\$ 5,665,411	10.8%	0.0%	
Drugs	6.4%	\$ 15,622,321	10.3%	0.7%	
Supplies	4.2%	\$ 8,846,409	6.8%	0.3%	
				0.0%	
				0.0%	
Total	%	\$ 137,526,853	75.5%	7.6%	

Deliberations II, 34.

10. In its approved FY22 budget, UVMHC budgeted NPR/FPP of \$1,500,593,928, total revenue of \$1,714,176,989, total expenses of \$1,662,751,679, and a net operating margin of \$51,425,310. *See UVMHN Presentation, 15.* UVMHC's projections for FY22, without any modification of its charges, are for an NPR/FPP of \$1,426,409,150, total revenue of \$1,716,888,879, total expenses of \$1,756,030,450, and a net operating loss of \$39,141,570. *See id.* If UVMHC were to receive a 10% rate increase, the hospital projects a net operating loss of \$12,788,457 for FY22.
11. UVMHN noted for the Board that UVMHC's projected NPR/FPP, which is below its budget, is driven by different factors, including a restriction of some services, primarily inpatient surgical cases and the related ancillary revenue, a service mix that is more heavily weighted toward chronic medical cases, and shifts in the payer mix that results in lower than budget commercial payments for FY22. *See Testimony of Rick Vincent, Hearing Transcript (March 30, 2022), 55:17-56:20.*
12. For FY20 and FY21, UVMHC's actual NPR/FPP was below its budgeted NPR/FPP. *See Deliberations II, 16.* For FY17 through FY19, UVMHC's actual NPR/FPP was above its

budgeted NPR/FPP. *See id.* UVMHC's operating margin for FY21 was approximately \$36.5 million; for FY20 it was an operating loss of approximately \$4 million; for FY19, FY18, and FY17, UVMHC had operating margins of approximately \$31.4 million, \$46.1 million, and \$68.6 million, respectively. *See* Deliberations II, 19. For FY20 and FY21, UVMHC's approved changes in charge were 6.00% and 6.05%, respectively. *See* Deliberations, 21. UVMHC's five-year average change in charge, without a mid-year adjustment, is 3.51%. *See id.* UVMHC's FY21 operations were affected by a cyberattack and the closure of the Fanny Allen ambulatory surgery center, in addition to the impact of the COVID-19 pandemic. *See* Budget Order, Findings, ¶14.

13. UVMHC is subject to financial covenants with its debt holders, including an annual debt service coverage ratio covenant.¹ *See* UVMHC Presentation, 23. UVMHC projects its debt service coverage ratio for FY22 at 1.90; if the ratio falls to 1.35 (an additional UVMHC loss of \$31 million) a consultant call is triggered, and if the ratio falls to 1.25 (an additional UVMHC loss of \$37 million) a default is triggered. *See id.*
14. UVMHC's days cash on hand decreased from 198.8 for FY21 to a projected 154.4 for FY22. *See* Deliberations II, 18. UVMHC has been using its reserves in FY22. *See* UVMHC Presentation, 24. UVMHC's days cash on hand as of the first quarter of FY22 was 191.9. *See* Deliberations II, 22. The median days cash on hand for Vermont PPS hospitals for first quarter of FY22 was 152. *See id.* Medians for Northeast hospitals and Northern New England hospitals gathered from Fitch Rating Solutions were 162.2 and 164.3, respectively, for 2019. *See id.* UVMHC's days cash on hand for FY19 was 169.4. *See* Deliberations II, 18.
15. UVMHC's FY22 operating margin, as of the first quarter of FY22, was -5.45%, compared to a median of 0.37% for all Vermont PPS hospitals and 2019 Fitch Rating Solutions medians of 1.20% and 0.80% for Northeast hospitals and Northern New England hospitals. *See* Deliberations II, 22. UVMHC's FY22 total margin, as of the first quarter of FY22, was -0.30%, compared to a median of 6.29% for all Vermont PPS hospitals and 2019 Fitch Rating Solutions medians of 2.00% and 3.50% for Northeast hospitals and Northern New England hospitals. *See id.*
16. UVMHC informed the Board that UVMHC "cannot sustain this magnitude of financial loss without it impacting access to services." Budget Adjustment Request, 7. In response to GACB staff questions about a contingency if UVMHC's rate increase is not approved, the hospital responded that "if this mid-year adjustment is not approved, we will need to scale back service, which will impact wait times." *See* Deliberations II, 23.
17. Based on the projected FY22 price inflation table in Findings, ¶ 9, the sum of the weighted average increases of projected inflation above budgeted inflation is between 2.5% and 3.7%, depending on whether contract staffing is included. *See* Deliberations II, 36. The following chart summarizes the analysis:

¹ The covenant is tested at the UVMHC Obligated Group level, of which UVMHC contributes 63% and CVMC contributes 12% towards the debt service coverage ratio. *See* Email Response from Rick Vincent to GACB Staff Follow-Up Questions (April 4, 2022).

Wages/Compensation - Non-Medical Staff	1.5%
Fringe	0.0%
Drugs	0.7%
Supplies	0.3%
Sub-total:	2.5%
Contract Staffing (Travelers)	1.2%
Total:	3.7%

	1% Value	Rate (low-end)	Rate (high-end)	NPR Impact at 2.5%	NPR Impact at 3.7%
UVMHC 1% value of rate request (9 months)	\$ 4,936,889	2.5	3.7	\$ 12,342,223	\$ 18,266,489
UVMHC 1% value of rate request (6 months)	\$ 3,291,259	2.5	3.7	\$ 8,228,148	\$ 12,177,658

Deliberations II, 36.

18. In connection with the hospital's request for a mid-year rate increase, the Board received and considered approximately 58 public comments. *See* Deliberations II, 2. Most of the comments (98%) called on the Board to vote against any rate increase, with more than half citing affordability for Vermonters and Vermont businesses. *See id.* In particular, many comments argued against a rate increase because that rate increase shifts additional unplanned costs to self-insured businesses and households that would pay increased expenses for medical care that they had not planned for, while also facing the cost pressures from increased inflation. *See, e.g.,* Letter from Sara Teachout, BlueCross BlueShield of Vermont, 1 (March 22, 2022), and Letter from Sharron Scott, Vermont State Colleges, 1 (March 25, 2022).
19. In response to a request from GMCB about the availability of other federal funds or an increase in Vermont Medicaid reimbursements to offset hospitals' commercial rate increases, the Vermont Agency of Human Services provided a letter that explained:

Speaking directly to the Board's interest in whether Medicaid can increase its rates to offset the mid-year rate adjustments as requested, I emphasize the following three points:

- 1.) The State is required to manage spending within a budget neutrality cap for its Global Commitment to Health 1115 Demonstration Waiver. The budget neutrality cap is a primary concern when considering any new investment or adjustment to Medicaid rates, particularly as AHS is actively negotiating the terms of renewal for Vermont's waiver. I do not anticipate final terms prior to June, 2022.
- 2.) The Department of Vermont Health Access (DVHA) has already increased Medicaid payments for services offered by hospitals in 2022 and provides Disproportionate Share Hospital (DSH) payments to address a portion of the shortfall that hospitals experience from government payment rates.
- 3.) DVHA is leading the way in the transition to value-based payments through providing fixed, prospective payments for hospitals—this creates a predictable and stable revenue stream when service patterns are disrupted as evidenced by COVID-19.

See Letter from Secretary Jenney Samuelson, Vermont Agency of Human Services, 1-2 (April 1, 2022) (AHS Letter).

The letter additionally stated that “[w]e need to continue aggressively pursuing health care reform, grounding our system in predictable, prospective payments while addressing Vermont’s economic challenge.” AHS Letter, 2. The letter continued:

To this end, I encourage the GMCB to carefully consider the proposals from the hospitals for mid-year adjustments – particularly in light of the available FEMA funding, and extensive support that has been provided by state and federal funding mechanisms – and weigh the need for short-term stabilization versus long-term sustainability.

Id.

CONCLUSIONS

Mid-year adjustments to approved hospital budgets must be limited to “exceptional or unforeseen circumstances” where the affected hospital can show that it needs the requested adjustment. See 18 V.S.A. § 9456(f). This is particularly true of mid-year commercial rate increases that, as many commentators explained, result in unanticipated increased health care costs to individuals and businesses that they would not have planned for. Findings, ¶ 17. After finding that a hospital meets these statutory threshold criteria, the decision to modify a hospital’s budget order mid-year is within our discretion, guided by factors set out in our hospital budget review rule. See 18 V.S.A. § 9456(f); GMCB R. 3.000, § 3.401(a)(1)-(5). As noted below, we conclude that UVMMC has made a showing of need in the face of unexpected circumstances, and we modify its budget by increasing its rates by 2.5% above its approved FY22 budget.

Increased cost pressures from price inflation, staffing challenges, and increased use of high-cost temporary labor do not, by themselves, necessarily constitute “exceptional or unforeseen circumstances,” but we conclude that taken together, and in the context of how those factors impact UVMMC’s financial performance, the circumstances the hospital is facing are “exceptional or unforeseen.” See Findings, ¶¶ 5-8, 10-11. We also conclude that UVMMC has

made a showing of need based on its lower than budget NPR/FPP, its increased expenses, its changing payer mix, and its patient demand. *See Findings, ¶¶ 10-11.*

UVMMC's projected FY22 NPR/FPP is approximately \$74 million less than its budgeted NPR/FPP for FY22. *See Findings, ¶ 10.* The lower revenue is driven by factors including a shifting payer mix, with fewer commercial payers. *See Findings, ¶ 11.* UVMMC's operating expenses are projected to exceed its budget by approximately \$93 million. *See Findings, ¶ 10.* There is no additional Medicaid funding for UVMMC for the current fiscal year. *See Findings, ¶ 19.* Nor is additional Medicare funding expected for UVMMC for this fiscal year. *See Findings, ¶ 4.* Adjusting its commercial rates is consequently UVMMC's only option for a rate increase.

Historically, prior to FY20, UVMMC reported actual NPR/FPP that was close to or above its budgeted NPR/FPP. *See Findings, ¶ 12.* In FY20 and FY21, the hospital was affected by the COVID-19 pandemic as well as other factors, including a cyberattack and the closure of parts of its Fannie Allen ambulatory surgery center. *See Findings, ¶ 12.* The COVID-19 pandemic also affected the hospital's results for the first part of FY22. *See Findings, ¶ 6.* In FY21, UVMMC recorded an operating margin of 2.3%, or \$36.5 million. *See Findings, ¶ 12.* Without a rate increase, UVMMC projects an operating loss of approximately \$39 million, or - 2.3%. *See Findings, ¶ 10.*

Hospitals, along with individuals and businesses, are being affected by the increased costs of goods and services. We consider UVMMC's position relative to other hospitals, noting that its days cash on hand, while declining, is above the median for Vermont PPS hospitals and Northern Vermont and New England hospitals. *See Findings, ¶14.* Its operating margin, however, is lower than the median of those groups. *See Findings, ¶15.*

UVMMC states that without a rate increase, it will be forced to limit services. *See Findings, ¶16.* We also recognize that UVMMC has been using its reserves to cover expenses in FY22, and has a projected 154 days cash on hand for FY22. *See Findings, ¶14.*

UVMMC requests a 10% mid-year rate increase that will partially offset its projected operating loss. *See Findings, ¶4.* We conclude that a 10% increase is too large to ask commercial ratepayers to carry as a mid-year basis. Instead, we focus on the specific inflation elements driving the hospitals increased cost and conclude that a commercial rate increase that partially covers the adjusted price inflation increases from budget for wages and compensation for nursing and non-M.D. staff, drugs and supplies is appropriate. *See Findings, ¶17.* We therefore approve a mid-year change in charge of up to 2.5% above UVMMC's approved FY22 budget. As this is a mid-year adjustment and not tied to the hospital's fiscal year, we specify that the hospital is permitted to make this change to its rates effective as of our Board vote on April 8, 2022.

MODIFICATION TO BUDGET ORDER

Based on our findings and conclusions and the authority granted by Chapter 221, Subchapter 7 of Title 18, UVMMC's previously approved budget for FY22 is modified as follows:

- A. Effective as of the Board's vote on April 8, 2022, UVMMC may implement a mid-year change in charge increase of up to 2.5% over the levels approved in its FY22 Budget Order.
- B. The terms and conditions of the Budget Order remain in effect as stated in the Budget Order, except as expressly modified by this Order.
- C. After notice and an opportunity to be heard, the GMCB may amend the provisions contained herein, and issue an amended order, consistent with its authority as set forth in 18 V.S.A. Chapter 220, Subchapter 1, 18 V.S.A. Chapter 221, Subchapter 7, and GMCB Rule 3.000.
- D. The findings and orders contained in this decision do not constrain the Board's decisions in future hospital budget reviews, future certificate of need reviews, or any other future regulatory or policy decisions.

So ordered.

Dated: April 15, 2022
Montpelier, Vermont

s/ <u>Kevin Mullin, Chair</u>)	
)	GREEN MOUNTAIN
s/ <u>Jessica Holmes</u>)	CARE BOARD
)	OF VERMONT
s/ <u>Robin Lunge</u>)	

Board Members Pelham and Walsh, dissenting

s/ <u>Tom Pelham</u>)
)
s/ <u>Thom Walsh</u>)

Filed: April 15, 2022

Attest: s/ Jean Stetter
Green Mountain Care Board
Administrative Services Director

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